

# EXHIBIT A

# Terms and privacy

[Terms of Service](#)[Privacy Policy](#)[Prior Terms and Privacy](#)

## TERMS OF SERVICE

(Last Updated 2021-09-22)

Welcome to Earnin! These terms of service ("**Terms of Service**") constitute a legal agreement between you, and Activehours, Inc., d/b/a Earnin ("**Earnin**") governing your use of the Site and the Services. As used in these Terms of Service, the words "**Community Member**", "**you**" and "**your**" refer to you, the user of Earnin's website, device, and/or applications, as the party agreeing to these Terms of Service. The words "**we**", "**us**", "**our**" and any other variation thereof refer to Earnin. Any reference to "**Earnin**" in this document includes the directors, officers, employees, contractors, owners, agents, licensors, or licensees of Earnin. As used in these Terms of Service, the term "**Site**" includes all websites, devices, and/or applications we operate that link to these Terms of Service, pages within each such website, device, or application, any equivalent, mirror, replacement, substitute or backup website, device, or application, and pages that are associated with each such website, device, or application. The term "**Services**" refer to Earnin's products, services, and features available to you through one or more Sites. The use of the word "**Including**" in these Terms of Service to refer to specific examples will be construed to mean "including, without limitation" or "including but not limited to" and will not be construed to mean that the examples given are an exclusive list of the topics covered. **ARBITRATION NOTICE: UNLESS YOU OPT OUT OF ARBITRATION WITHIN THIRTY (30) DAYS OF THE DATE YOU FIRST AGREE TO THESE TERMS BY FOLLOWING THE OPT-OUT PROCEDURE SPECIFIED IN THE "DISPUTE RESOLUTION BY BINDING ARBITRATION" SECTION BELOW, AND EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE "DISPUTE RESOLUTION BY BINDING ARBITRATION" SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND EARNIN WILL BE RESOLVED BY BINDING INDIVIDUAL ARBITRATION AND YOU ARE WAIVING YOUR RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. PLEASE ALSO SEE "YOUR RESPONSIBILITY FOR THIRD PARTY BANK FEES" FOR A BETTER UNDERSTANDING OF YOUR, CONTINUED RESPONSIBILITY FOR THIRD-PARTY BANK FEES, INCLUDING BUT NOT LIMITED TO, OVERDRAFT AND INSUFFICIENT FUNDS FEES CHARGED BY YOUR BANK. BY ENTERING INTO THIS AGREEMENT AND BY USING EARNIN'S SERVICES, YOU AGREE AND UNDERSTAND THAT YOU, AND NOT EARNIN, SHALL BE LIABLE FOR ANY THIRD-PARTY BANK FEES AS DESCRIBED BELOW.**

## ACCEPTANCE OF TERMS

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY ACCESSING OR USING THE SITE OR THE SERVICES YOU AGREE TO BE BOUND BY THE TERMS OF SERVICE. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS OF SERVICE, YOU MAY NOT ACCESS OR USE THE SITE OR THE SERVICES. You may not use the Site or Services, or accept these Terms of Service, if

- a. you are not of legal age to form a binding contract with Earnin;
- b. you are prohibited by law from receiving or using the Services; or

c. you are not a U.S. resident.

You agree to comply with these Terms of Service, which include an agreement to resolve disputes in small-claims court. You also agree to comply with the following additional policies:

- o Privacy Policy
- o Consent to Receive Electronic Disclosures (E-Sign Disclosure and Consent)
- o Acceptable Use Policy
- o Digital Millennium Copyright Act
- o User Generated Content

We may revise these Terms of Service and any of the policies listed above (together, the "**Policies**") from time to time. The revised version will be effective at the time we post it, unless otherwise noted. If our changes materially reduce your rights or increase your responsibilities, we will provide notice to you via in-app notification and/or email at least ten (10) days prior to implementing the changes to the Policies. By continuing to use our Services after any changes to the Policies become effective, you agree to abide and be bound by those changes. If you do not agree with any changes to the Policies, you may close your account and terminate your Services with Earnin.

## SIGNING UP WITH EARNIN

You may only have one account with Earnin. To create an account, you must be a resident of the United States or one of its territories, be at least 18 years old or the age of majority in your state of residence, have a Verified Source of Income, a Bank Account and use a cellular/wireless telephone number and/or email address that you own.

An Earnin account will let you:

- o Obtain a Cash Out
- o Turn on Balance Shield
- o Use Earnin Express
- o Use Tip Yourself
- o View your Financial Calendar

You acknowledge that you must keep confidential any credentials you use to access your Earnin account, the Site and the Services. Your phone number, email address and other contact information must be kept current in your account profile. If you believe that either your credentials or a device that you use to access the Site and/or our Services has been lost or stolen, that someone is using your account without your permission, or that an unauthorized transaction has occurred, you must notify us IMMEDIATELY at [email protected] or live chat the Earnin team via the mobile app.

You also agree to provide accurate profile information, including, as applicable, your name, physical address, email address ("**Profile Information**"). Please update all your Profile Information whenever the information provided to us is no longer accurate. You can update your Profile information by clicking on the settings link after you login. If you need help in changing your Profile information, please email us at [email protected] or live chat the Earnin team via the mobile app. You also agree to provide accurate Bank Account information, and promptly update it whenever the information is no longer accurate. Note that we are not responsible for any payment processing errors or fees or other Services-related issues arising from your failure to keep your Profile Information current.

## TERMINATING YOUR EARNIN ACCOUNT

You may close your account and terminate your relationship with us without termination fees. However, if we have been unable to recoup payment of a Cash Out from Earnin, you will be unable to use the Services and Site even if you reactivate your account and sign up again until we are able to recoup any unreimbursed Cash Outs.

## EARNIN SERVICES

Once we have verified the Required Identifying Information that you provide to us, you will be able to begin using Earnin's Services and Site. If we have not verified the Required Identifying Information that you have provided to us, you have not provided all the Required Identifying Information, or you have not completed the account registration process, you may be unable to use Earnin's Services and Site.

## NO REQUIRED FEES OR CHARGES

You are not required to pay any fees or charges to use any of the Earnin Services. There are no required fees to obtain a Cash Out, Max Boost, set alerts for a Balance Shield or set a manual Balance Shield Cash Out, enroll in Earnin, Express and/or enroll.

### Tip Yourself

You may make voluntary tips to Earnin in appreciation of the Site and/or Services rendered, but you are not required to pay any charge or fee to be eligible to receive or in return for receiving the Services. Please note that while tips are non-refundable, if you need help in changing your tip amount, please live chat the Earnin team via the mobile app. These voluntary tips help fund us and keep us going, but we want you to be in control of if, when, and how much to tip. You will never be denied access to the Services on the basis of not tipping or the amount of any tip you choose to leave. For more information about voluntary tips please reference the specific service below.

We believe that the world is a better place when we all help each other out. You can support our Services by tipping what you think is fair and/or by "paying it forward" to others within the Earnin community by increasing your tip amount. With all of Earnin's Services and the Site, you choose whether to pay, what to pay, and how often you pay.

### Cash Out

Allows you to access some or all of various forms of income (such as your earned wages or in some instances, certain government benefits checks (as determined by Earnin)) by requesting a "Cash Out" prior to when that income is deposited into your Bank Account, by requesting a "Cash Out". You will have a set "Daily Max", which is the maximum you are allowed to Cash Out in one day, as well as a "Pay Period Max", which is the maximum amount you can Cash Out before the next scheduled deposit. All Earnin community members start with a \$100 Pay Period Max, with a potential for it to increase up to \$500. We have the right to adjust your maxes at any time. Your maxes are determined based on an evaluation of a number of factors we have identified that we believe are related to evaluating your financial health. These factors may be changed at any time, at our sole discretion. We may also limit the number of Cash Outs that you can request at any given time or over a period of time, or decline to extend a Cash Out to you if we reasonably believe such refusal is necessary or advisable for legal or security reasons or to protect the Services. Generally you will receive your Cash Out within the next 2-3 Banking Days after you have submitted your request. Cash Out Services require you to provide your debit card information to Earnin as well.

### Max Boost

As part of Earnin's Cash Out Services, you may be offered the opportunity to participate in Max Boost. Max Boost allows you to request a Max boost from another Earnin member in the program (the "Grantor") by providing you a unique link to send to the Grantor; and if the Grantor approves the request you will get a temporary \$50 pay period Max increase which you can then Cash Out. This temporary Max Boost will expire at the end of the pay period. Grantors are not required to approve a Max Boost request, and there is no financial or legal obligation on the Grantor. We may cancel an approved Max Boost if you are no longer at your pay period Max, or if we reasonably believe such refusal is necessary

or advisable for legal or security reasons, or to protect the Services. You may also have the opportunity to receive a temporary one-time Max Boost if you send the unique link to a non-Earnin member and they decide to sign-up for an Earnin account.

There are no fees or costs associated with Cash Out or Max Boost. As outlined above, Earnin accepts voluntary tips in appreciation for Services rendered. We appreciate the tip if you can and however much you feel is fair- anywhere from \$0-\$14 for Cash Out and Max Boost. We like putting you in control.

## **Lightning Speed**

Depending on your bank, by providing us your debit card information, or banking routing number and Bank Account information, you may be able to Cash Out with Lightning Speed, a service that enables funds associated with Cash Outs to be expedited. If Lightning Speed is unavailable to you, you will generally receive your Cash Out within the next 2-3 Banking Days after you request a Cash Out in your Bank Account. Otherwiself there are no issues you provide us with your debit card information, you should be able to receive your Cash Out within the same Banking Day. Fees may apply to Lightning Speed in some instances.

## **Balance Shield**

Allows you to set an alert to have Earnin send you a notification when your Bank Account falls below an amount that you set (\$0- \$400) to help you monitor your Bank Account's balance. Balance Shield also incorporates Cash Out, by automatically setting a cash out of up to \$100 when your Bank Account balance has fallen below \$100. Note, that a Balance Shield Cash Out is subject to your available earned wages, your Daily Max and Pay Period Max requirements. You are responsible for monitoring your Daily Max and Pay Period Max to ensure that the Cash Out application of Balance Shield is available to you. We may limit the amount we send you for Balance Shield Cash Out at any given time or over a period of time. We may also decline to offer Balance Shield to you at any time, without prior notice, if we reasonably believe such refusal is necessary or advisable for legal or security reasons, or to protect the Services.

Balance Shield alerts can stay on indefinitely until you turn them off. There is no fee or charge to use Balance Shield alerts. Generally, Balance Shield Cash Out will need to be turned on manually after each Balance Shield Cash Out, however, setting a voluntary tip (\$1.50-\$14.50) triggers Earnin to automatically keep Balance Shield Cash Out on even after a Balance Shield Cash Out. If you choose to enable Balance Shield Cash Out to activate automatically, Balance Shield Cash Out will stay on indefinitely until you turn it off, and will automatically debit your account for the amount and tip you have set. Earnin will send you an annual reminder that Balance Shield is turned on.

## **Earnin Express**

This service is provided to you through a partnership between Earnin and Evolve Bank & Trust, an Arkansas chartered depository institution. Evolve Bank & Trust is a member of the FDIC. The deposit account (the "*Earnin Express Account*") provided to you in connection with the Earnin services is provided to you by Evolve Bank & Trust and is subject to a deposit account agreement between you and Evolve Bank & Trust. You may access the terms of such agreement at any time [here](#).

By signing up for Earnin Express, you will authorize us to obtain Required Identifying Information, directly or indirectly through our third-party service providers, information about you and your Bank Account from the financial institution holding your Bank Account and other third-party websites and databases that may be necessary to provide the services. We make no effort to review such information for any purpose, including, but not limited to, accuracy, legality, or non-infringement. You agree that our third-party service providers and the operators and owners of the third-party websites will be entitled to rely on the foregoing authorization granted by you. Once Earnin is able to verify your identity, you will be automatically enrolled in Earnin Express and, subject to Evolve Bank & Trust's

approval, an Earnin Express Account will be set up on your behalf.

Your Earnin Express Pay Period Max will be the lesser of \$1,000, or up to 80% of the amount of funds you direct from your paycheck to your Earnin Express Account. If you direct funds outside of your paycheck to your Earnin Express Account, those funds will not count towards your Pay Period Max and will be credited to your Bank Account. You may obtain information about the balance of funds in your Earnin Express Account at any time in the app. Because Earnin Express requires [Lightning Speed](#), funds from your Earnin Express Account that are to be credited to your Bank Account, will arrive within the same [Banking Day](#). Please note that if Lightning Speed is unavailable, Earnin may move your funds via ACH.

You authorize Earnin to directly debit all repayments of Cash Outs to occur directly from your Earnin Express Account any outstanding amounts due to Earnin from a Cash Out on the day of your next regularly scheduled paycheck. Failed or rejected fund transfers to repay a Cash Out may be reinitiated at any time up to 150 days from either your Earnin Express Account or your Bank Account.

We may also credit funds from your Earnin Express Account to your Bank Account without notice to you upon the closure of your Earnin Express Account. We will review your Earnin Express Account and direct deposit activity at various times. We may use proprietary fraud and risk modeling when completing this review and assessing the risk associated with your Earnin Express Account. This review checks for, among other things, suspicious or illegal activity, and whether your Earnin Express Account activity complies with these Terms of Service. We may instruct Evolve Bank & Trust to transfer funds from your Earnin Express Account to your Bank Account without notice to you upon the closure of your Earnin Express Account or if we, in our sole discretion, suspect Earnin Express is being used for illicit purposes or otherwise in violation of these Terms of Service.

There are no fees or costs associated with Earnin Express. As outlined above, Earnin accepts voluntary tips in appreciation for Services rendered. We appreciate the tip if you can and however much you feel is fair- anywhere from \$0-\$14. We like putting you in control.

Both of us may each terminate this Earnin Express relationship unilaterally at any time upon notice. To terminate your participation in Earnin Express, please contact us by emailing [\[email protected\]](#), using live chat with the Earnin team via the mobile app, or closing the Earnin Express Account pursuant to the [terms governing the Earnin Express Account](#). Prior to termination, please ensure that you have switched your direct deposit from your employer away from your Earnin Express Account. Upon notice of termination, we or Evolve Bank & Trust will return any remaining balance in your Earnin Express Account to your Bank Account through an ACH transfer and you will no longer be able to use your Earnin Express Account or Earnin Express Service. For more information click [here](#).

## NO OBLIGATION TO REPAY

We will have no legal or contractual claim or remedy against you based on your failure to repay any Cash Out, Max Boost , Balance Shield Cash Out, or Cash Out via Earnin Express you take, however, if we are unable to access funds from your bank account to complete a payment that you authorized Earnin to take, you will be prevented from using the Services until you pay any outstanding authorized payment to Earnin. Earnin will not engage in any debt collection activities if the amount of the Cash Out is not repaid on the scheduled date, place the amount of the Cash Out as a debt with, or sell it to, a third party, or report to a consumer reporting agency concerning the amount of the payout.

## Tip Yourself.

This service is provided to you through a custodial account deposit agreement between you and Evolve Bank & Trust, an Arkansas chartered depository institution. You may access the terms of such agreement at any time [here](#).

By enrolling in Tip Yourself, you may transfer a chosen dollar amount from your Bank Account to an account that you have with Evolve Bank & Trust, your Tip Yourself

Account. The Tip Yourself Service offered by Earnin allows you to better track and meet your savings goals by allowing you to authorize Evolve Bank & Trust to make one-time and/or recurring transfers from your Bank Account to your Tip Yourself Account. Within the Tip Yourself Service you can track your savings towards your specific savings goals by creating different "tip jars". You can create up to 5 tip jars using the Tip Yourself Service to help you better track your personalized savings goals. You may obtain information about the balance of funds in your Tip Yourself Account at any time in the app.

Tip Yourself also has an Automated Savings feature, that allows you to set up scheduled transfers between your Bank Account and your Tip Yourself Account. If you decide to turn on Automated Savings, you can choose a frequency that works for you, and then set up different scheduled transfers for your specific saving goals to your Tip Yourself Account, which will be reflected in your tip jars through the Earnin Tip Yourself Service. You will receive an email notification the evening prior to a scheduled transfer as a reminder. You are responsible for ensuring that your Bank Account has sufficient available funds to cover an

Automated Savings transfer as the Tip Yourself Service will not check your Bank Account balance before any scheduled transfers. Earnin or Evolve Bank & Trust is not responsible for overdrafts, insufficient funds fees, or any other third-party fees resulting from insufficient funds related to a transfer from your Bank Account to your Tip Yourself Account. You may pause, skip or change at any time prior to the day of the scheduled transfer your tip yourself amount and authorization.

Only funds from your Bank Account may be transferred to your Tip Yourself Account. You may transfer funds to your Tip Yourself Account via electronic debits from your Bank Account. If you enable "Lightning Speed", you may fund your Tip Yourself Account within the same Banking Day with your debit card. The funds in your Tip Yourself Account are held at Evolve Bank & Trust for your benefit. You may not use the funds in your Tip Yourself Account to make purchases, transfer funds to third parties, or for any other purpose other than to withdraw such funds to your linked Bank Account. Funds held in your Tip Yourself Account will remain in your Tip Yourself Account until you instruct us to transfer any or all of your funds from your Tip Yourself Account to your Bank Account by requesting such transfer in the app. We, or Evolve Bank & Trust, will generally transfer the requested funds from your Tip Yourself Account to your Bank Account within two **Banking Days** of when we receive your request. It is important to know the amount of available funds in your Tip Yourself Account before instructing us to transfer funds from your Tip Yourself Account to your Bank Account. If you do not have sufficient available funds in your Tip Yourself Account to cover the amount of the requested transfer, your request for the transfer will be declined.

We may instruct Evolve Bank & Trust to transfer funds from your Tip Yourself Account to your Bank Account without notice to you upon the closure of your Tip Yourself Account or if we, in our sole discretion, suspect Tip Yourself is being used for illicit purposes or otherwise in violation of these Terms of Service.

For our compliance purposes and in order to provide services to you, you hereby authorize us to, directly or through a third-party, obtain, verify, and record information and documentation that helps us verify your identity and bank account information. You also authorize us to correct any credits or errors made to your Tip Yourself Account. When you register for Tip Yourself and from time to time thereafter, we may require you to provide and/or confirm the information and documentation that will allow us to identify you, including Required Identifying Information.

We will review your Tip Yourself Account and transaction activity at various times, including when you initiate a transfer of funds into or out of your Tip Jar(s). We may use proprietary fraud and risk modeling when completing this review and assessing the risk associated with your Tip Yourself Account. This review checks for, among other things, suspicious or illegal activity, and whether your Tip Yourself Account activity complies with these Terms of Service. Review may result in: delayed, blocked or canceled fund transfers.

By using Tip Yourself and providing user information to us, you authorize us to obtain, directly or indirectly through our third-party service providers, information about you and your bank account from the financial institution holding your bank account and other third-party websites and databases that may be necessary to provide the services. We make no effort to review such information for any purpose, including, but not limited to, accuracy, legality, or non-infringement. You agree that our third-party service providers and the operators and owners of the third-party websites will be entitled to rely on the foregoing authorization granted by you.

There are no fees or costs associated with Tip Yourself Service offered by Earnin.

Both of us may each terminate this Tip Yourself relationship unilaterally at any time upon notice. To terminate your participation in Tip Yourself, please contact us by emailing [email protected], using live chat with the Earnin team via the mobile app, or closing the Tip Yourself Account pursuant to the terms governing the Tip Yourself Account. Upon notice of termination, we or Evolve Bank & Trust will return any remaining balance in your Tip Yourself Account to your Bank Account through an ACH transfer and you will no longer be able to use your Tip Yourself Account or Tip Yourself Service. For more information click [here](#).

## YOUR USE OF THE SERVICES

You may only use the Site and Services for your own personal, non-commercial use and not on behalf of or for the benefit of any third party. Your use of the Site and the Services must comply with all applicable law. If your use of the Site and/or the Services is prohibited by applicable law, then you are not authorized to use the Site and/or the Services. We are not responsible if you use the Site and/or the Services in any manner that violates applicable law.

When you request a Cash Out, Max Boost, Balance Shield Cash Out, or Earnin Express Cash Out, you warrant that the earned wages being cashed out are just and due to you and that you have not received payment for such wages or any part of the wages from anyone else.

You represent and warrant that you have the right to authorize us and/or Evolve Bank & Trust to credit and debit your Bank Account for credits you request and payments you authorize under these Terms of Service, and you agree to indemnify and hold us and/or Evolve Bank Trust harmless from any claims by any other owner of the account.

You also agree that any instructions received by us for a Cash Out, Max Boost, Balance Shield Cash Out, or Earnin Express Cash Out from your Earnin username, password or mobile device (collectively "*Credentials*") will be

considered authorized by you. You understand that the use of any of your Credentials by another person will still be recognized by Earnin as being authorized by you. For example, if you provide your username and password to another person and that person uses that information to request a Cash Out, Max Boost, Balance Shield Cash Out, or Earnin Express Cash Out, we will consider that request as authorized by you. You agree to keep confidential and to take all reasonable precautions and make all reasonable efforts to protect the secrecy of all Credentials issued to you, selected by you, or utilized by you. If you believe your Credentials are no longer secure or confidential, or that someone has used your Credentials without your permission, please contact us immediately by emailing [email protected] or live chat with the Earnin team via the mobile app.

## DEBITS AND CREDITS

We will debit any payments authorized by you for Cash Outs, Max Boost and Balance Shield Cash Out directly from your Bank Account, and in the case of Earnin Express your Earnin Express Account on the day of your next regularly scheduled paycheck. By requesting a Cash Out, Max Boost or Balance Shield Cash Out, you authorize us to electronically initiate debit and credit entries to your Bank Account, and in the case of Earnin Express your Earnin Express Account; or if you link a debit card to your Earnin account, you authorize us to charge your debit card, for all payments

you authorize. You agree to maintain a balance that is sufficient to fund all payments that you initiate. We reserve the right to charge your Bank Account, and in the case of Earnin Express your Earnin Express Account, at any time on or after the day the paycheck associated with the earned wages you have requested is expected to deposit into your Bank Account or Earnin Express Account. Our failure to debit your Bank Account or Earnin Express Account for amounts due to Earnin repayment within a set amount of

time does not constitute a waiver of our right to charge your account for such funds. We will initiate debits to your Bank Account and Earnin Express Account or debit card as permitted by applicable laws and NACHA rules. Failed or rejected debits may be reinitiated at any time up to 150 days after the first debit. By enrolling in Tip Yourself, you authorize us to electronically debit and credit your Bank Account and Tip Jar. You are solely responsible for determining whether the funds debited from your Bank Account and the funds maintained in your Tip Yourself Account are acceptable to you.

Our authorization to initiate debit and credit entries to your Bank Account, Earnin Express Account and to your Tip Yourself Account will remain in full force and effect until you revoke your authorization. If you wish to revoke your authorization, you may do so by contacting [email protected] or using live chat with the Earnin team via the mobile app at least three business days before the day the transaction is scheduled and stop using the Site and the Services. Please note that your revocation of authorization when transactions are pending could result in delays to your receipt of funds and additional charges owed by you to Earnin. Earnin is not responsible for any third-party fees or costs that you may incur based on the timing of authorization revocation.

If we are unable to access funds from your Bank Account or Earnin Express Account to complete a payment that you authorized Earnin to take, you may be prevented from using the Site and the Services until you repay any outstanding amount. However, we will never engage in any debt collection activities if the outstanding amount is not repaid, place the outstanding amount as a debt with, or sell it to, a third party, or report to a consumer reporting agency concerning the outstanding amount.

## YOUR RESPONSIBILITY FOR THIRD PARTY BANK FEES

***IMPORTANT, PLEASE READ:*** Unless Earnin withdraws funds from your Bank Account on a day before your next regularly scheduled payday or scheduled

debit date as designated in the Services, you acknowledge and agree that you, and not Earnin, shall be responsible for any fees charged by your bank associated with overdrafts or insufficient fund events that occur when Earnin debits your Bank account for any outstanding amounts due to Cash Outs, Max Boost or Balance Shield Cash Out. This means that you, and not Earnin, are responsible for any overdraft fees, over-the-limit fees, or insufficient fund charges (including finance charges, late fees, or similar charges), or any other third-party fees that result from your failure to maintain a balance or available credit in your Bank Account that is sufficient to fund all payments you authorize, including any outstanding amounts due to Earnin that you have authorized.

Your bank, and not Earnin, controls the sequence in which it processes credits and debits (additions and subtractions) to your Bank Account. Thus, when Earnin seeks to debit your Bank Account for the authorized amounts owed to Earnin, the manner in which your bank processes credits and debits associated with various transactions may result in overdrafts and/or generate insufficient funds fees or other bank fees even where you believe that you have sufficient funds in your Bank Account. You, and not Earnin, are responsible for reviewing the terms of your Bank Account to understand your Bank's overdraft policy

and the manner in which your bank posts debits and credits.

You are responsible for funding all payments you initiate. We are not responsible for any overdraft fees, over-the-limit fees, or insufficient fund charges (including

finance charges, late fees, or similar charges), or any other third-party fees that result from your failure to maintain a balance or available credit in your Bank Account that is sufficient to fund all payments you initiate.

## SMS MESSAGING

By providing Earnin with a telephone number for a cellular phone or other wireless device, you agree to receive autodialed and pre-recorded, non-marketing, service-related text messages from or on behalf of Earnin at the phone number provided. You further consent to receiving autodialed and pre-recorded text messages from or on behalf of Earnin at the number provided for marketing or promotional purposes. You understand that consent to marketing-related messages is not a condition of using the Services. To stop receiving marketing-related messages, you may reply STOP to any marketing-related text message you receive from Earnin. After you text "STOP" to us, we will send you a text to confirm that you have been unsubscribed. After this, you will no longer receive text messages from us. Standard message and data rates may apply to both non-marketing and marketing-related messages. You consent to receive SMS messages (including text messages), including prerecorded and artificial voice and autodialed from us, our agents, representatives, affiliates or anyone calling on our behalf at the specific number(s) you have provided to us, with service-related information such as alerts, or questions about your use of the Services and/or Earnin account. You certify, warrant and represent that the telephone number you have provided to us is your contact number and not someone else's. You represent that you are permitted to receive text messages at the telephone number you have provided to us. Carriers are not liable for delayed or undelivered messages. You agree to promptly alert us whenever you stop using a telephone number. You may text "stop" to opt out at any time. Standard message and data rates may apply to all SMS messages (including text messages), for any messages sent to you from us and to us from you. We will message you as needed. We may modify or terminate our SMS messaging services from time to time, for any reason, and without notice, including the right to terminate SMS messaging with or without notice, without liability to you.

## MODIFICATION TO SITE OR SERVICES

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently the Earnin Site or the Services with or without notice. We reserve the right to change the Services and Terms of Service,

including applicable fees, in our sole discretion and from time to time. In such event, if you are a member of the Service and such changes are material, we will provide notice to you. If you do not agree to the changes after receiving a notice of the change to the Services, you may stop using the Services. Your use of the Services after you are notified of any change(s) will constitute your agreement to such change(s). You agree that Earnin will not be liable to you or to any third party for any modification, suspensions, or discontinuance of the Site or the Services.

## RIGHTS YOU GRANT TO US

By submitting information, data, passwords, usernames, PINs, other log-in information, materials and other content to us through the Earnin Services, you are licensing that content to us solely for the purpose of providing such Services. Earnin may use and store the content for the purpose of providing the Service to you. By submitting this content to Earnin, you represent that you are entitled to submit it to Earnin for use for this purpose, without any obligation by us to pay any fees or other limitations.

By using the Site and the Services and providing Profile Information to us, you authorize us to obtain, directly or indirectly through our third-party service providers, information about you and your Bank Account from the financial institution holding your Bank Account and other third-party websites and databases that may be necessary to provide the services. We make no effort to review such information for any purpose, including, but not limited to, accuracy, legality, or non-infringement. You agree that our third-party service providers and

the operators and owners of the third-party websites will be entitled to rely on the foregoing authorization granted by you.

## **YOU ACKNOWLEDGE AND AGREE THAT WHEN EARNIN IS ACCESSING AND RETRIEVING ACCOUNT INFORMATION FROM THIRD PARTY SITES, EARNIN IS ACTING AS YOUR AGENT, AND NOT AS THE AGENT OF OR ON BEHALF OF THE THIRD PARTY.**

You understand and agree that the Services are not sponsored or endorsed by any third parties accessible through the Services.

## **EARNIN'S INTELLECTUAL PROPERTY RIGHTS**

All content included or available in connection with the Site, including any and all materials, information, text, data, contents, names, trade names, trademarks, trade dress, service marks, layout, logos, designs, images, graphics, illustrations, artwork, icons, photographs, displays, sound, music, video, animation, organization, assembly, arrangement, interfaces, databases, technology, and all intellectual property of any kind whatsoever (collectively, the "*Content*") and the selection and arrangement thereof is owned exclusively by Earnin, the licensors or suppliers of Earnin and is protected by U.S. and international copyright and other intellectual property laws. You may not copy, imitate, modify or use them without our prior written consent. All rights, title and interest in the Content is hereby reserved. Without limiting the foregoing, no Content on the Site or in the Services may be copied, reproduced, duplicated, published, or distributed in any form or by any means whatsoever without the express prior written permission of Earnin. You may not alter or modify or change Earnin's Content in any way, use them in a manner that mischaracterizes Earnin or display the Content in a manner that implies Earnin's sponsorship or endorsement.

Any feedback, questions, comments, suggestions, ideas, or the like that you send to Earnin will be treated as being non-confidential and nonproprietary, and Earnin will be free to use such information for any purpose whatsoever including developing, manufacturing, and marketing products and services incorporating the information.

## **NO LEGAL, TAX, OR FINANCIAL ADVICE; ALERTS**

## **THE SERVICE IS NOT INTENDED TO PROVIDE LEGAL, TAX, OR FINANCIAL ADVICE. EARNIN IS NOT A FINANCIAL PLANNER, BROKER, OR TAX ADVISOR.**

To the extent you use a Service for banking or other financial services, the Service is intended only to assist you in your financial organization and decision-making and is broad in scope. Before making any final decisions or implementing any financial strategy, you should consider obtaining additional information and advice from your accountant or other financial advisers who are fully aware of your individual circumstances. Please note that we are not a financial adviser, and the Tip Yourself services are not intended to provide financial advice. Your financial situation is unique. We are not responsible for ensuring your Bank Account has sufficient funds for your needs, purposes, or transactions. We do not make any representations, warranties, or guaranties of any kind that the Services are appropriate for you. Before using the Services, you should consider obtaining additional information and advice from a financial adviser.

You understand and agree that any alerts provided to you through the Services may be delayed or prevented by a variety of factors. Earnin makes commercially reasonable efforts to provide alerts in a timely manner with accurate information,

but we cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. EARNIN will not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert. **DISCLAIMER OF REPRESENTATION AND WARRANTIES**

THE SITE, SERVICES, INCLUDING CASH OUTS, LIGHTNING SPEED, MAX BOOST, BALANCE SHIELD, EARNIN EXPRESS, AND TIP YOURSELF, INFORMATION, DATA, FEATURES, AND ALL CONTENT IS OFFERED AND MADE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, EARNIN AND ITS AFFILIATES, LICENSORS AND SUPPLIERS (INCLUDING PAYMENT CARD NETWORKS AND PAYMENT

PROCESSORS) EXPRESSLY DISCLAIM ANY WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND NON-INFRINGEMENT. EARNIN AND ITS AFFILIATES, LICENSORS AND SUPPLIERS (INCLUDING PAYMENT CARD NETWORKS AND PAYMENT PROCESSORS) MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE CONTENT OR OPERATION OF THE SITES OR SERVICES, INCLUDING CASH OUTS, LIGHTNING SPEED, MAX BOOST, BALANCE SHIELD, EARNIN EXPRESS, AND TIP YOURSELF. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITES AND SERVICES, INCLUDING CASH OUTS, LIGHTNING SPEED, MAX BOOST, BALANCE SHIELD, EARNIN EXPRESS, AND TIP YOURSELF IS AT YOUR SOLE RISK.

EARNIN AND ITS AFFILIATES, LICENSORS AND SUPPLIERS (INCLUDING PAYMENT CARD NETWORKS AND PAYMENT PROCESSORS) MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, RELIABILITY, COMPLETENESS, OR CONTINUED AVAILABILITY OF THE CONTENT ON THE SITES OR THE SERVICES, AND EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. EARNIN AND ITS AFFILIATES, LICENSORS AND SUPPLIERS (INCLUDING PAYMENT CARD NETWORKS AND PAYMENT PROCESSORS) MAKE NO REPRESENTATION, WARRANTY, OR GUARANTEE THAT THE CONTENT THAT MAY BE AVAILABLE THROUGH THE SITES OR SERVICES IS FREE OF BUGS, DEFECTS, OR ERRORS, OR INFECTION FROM ANY VIRUSES OR OTHER CODE OR COMPUTER PROGRAMMING ROUTINES THAT CONTAIN CONTAMINATING OR DESTRUCTIVE PROPERTIES OR THAT ARE INTENDED

TO DAMAGE, SURREPTITIOUSLY INTERCEPT, OR EXPROPRIATE ANY SYSTEM, DATA, OR PERSONAL INFORMATION. EARNIN AND ITS AFFILIATES, LICENSORS AND SUPPLIERS WILL NOT BE LIABLE IN ANY WAY TO YOU OR TO ANY THIRD PARTY, FOR ANY ERROR OR DELAY IN THE SITES OR THE SERVICES, AND ANY LOSS OR DAMAGE ARISING FROM

- A. ANY SUCH ERROR OR DELAY
- B. NON-PERFORMANCE OR
- C. INTERRUPTION IN THE SITES OF SERVICES DUE EITHER TO ANY NEGLIGENT ACT OR OMISSION BY EARNIN AND ITS AFFILIATES, LICENSORS AND SUPPLIERS, OR "FORCE MAJEURE" OR ANY OTHER CAUSE BEYOND THE CONTROL OF EARNIN.

## LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES WILL EARNIN OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD PARTY PARTNERS OR SUPPLIERS (INCLUDING PAYMENT CARD NETWORKS OR PAYMENT PROCESSORS) (COLLECTIVELY, THE "*EARNIN PARTIES*") BE RESPONSIBLE OR LIABLE TO YOU OR TO ANY THIRD PARTY, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, LIQUIDATED, OR PUNITIVE DAMAGES YOU MAY INCUR IN CONNECTION WITH THE SITES, THE SERVICES, INCLUDING CASH OUTS, LIGHTNING SPEED, MAX BOOST, BALANCE SHIELD, EARNIN EXPRESS AND TIP YOURSELF, YOUR USE THEREOF, OR ANY OF THE USER SUBMISSIONS, INFORMATION, DATA, OR OTHER MATERIAL TRANSMITTED THROUGH OR RESIDING ON THE SITES, OR ANY ERRORS, DEFECTS, INTERRUPTIONS, DELETIONS, OR LOSSES RESULTING THEREFROM, INCLUDING LOSS OF PROFIT, REVENUE, OR BUSINESS, ARISING IN WHOLE OR IN PART FROM YOUR

ACCESS TO OR USE OF THE SERVICE, EVEN IF THE EARNIN PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNLESS OTHERWISE EXPRESSLY SET

FORTH IN THESE TERMS OF SERVICE, THE EARNIN PARTIES' LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO US \$500.00 (FIVE HUNDRED UNITED STATES DOLLARS).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN SUCH STATES LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF THIS SECTIONS AND THE PREVIOUS SECTION MAY NOT APPLY TO YOU.

## INDEMNIFICATION OF EARNIN

To the fullest extent permitted by law, you agree to indemnify, defend and hold harmless the Earnin Parties from and against any and all claims, losses, expenses, demands or liabilities, including reasonable attorneys' fees arising out of or relating to

- i. your access to, use of or alleged use of the Site or the Services;
- ii. your violation of these Terms of Service or any representation, warranty, or agreements referenced herein, or any applicable law or regulation;
- iii. your violation of any third party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; or
- iv. any disputes or issues between you and any third party.

## GOVERNING LAW & FORUM FOR DISPUTES

Any past, present, or future claim, dispute, or controversy involving you (or persons claiming through or connected with you), on the one hand, and us on the other hand, relating to or arising out of this Agreement, any marketing that led to consummation of this Agreement, and/or the activities or relationships that involve, lead to, or result from this Agreement, regardless of whether they arise from contract; tort (intentional or otherwise); consumer protection laws; a constitution, statute, common law, or principles of equity; or otherwise will be

governed by the laws of the State of California without regard to its conflict or choice of laws provisions. Any dispute with Earnin or its officers, directors, employees, agents or affiliates, arising under or in relation to these Terms of Service will be resolved exclusively through the small-claims court of the Superior Court of California within the county of Santa Clara, California, except with respect to imminent harm requiring temporary or preliminary injunctive relief in which case we may seek such relief in any court with jurisdiction over the parties. You understand that, in return for agreement to this provision, Earnin is able to offer the Service at the terms designated, and that your assent to this provision is an indispensable consideration to these Terms of Service.

You also acknowledge and understand that, with respect to any dispute with Earnin, its officers, directors, employees, agents or affiliates, arising out of or relating to your use of the Service or these Terms of Service:

- YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY; and
- YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT INVOLVING ANY SUCH DISPUTE.

## DISPUTE RESOLUTION BY BINDING ARBITRATION

YOU HAVE READ THIS SECTION CAREFULLY AND UNDERSTAND THAT IT LIMITS YOUR RIGHTS IN THE EVENT OF A DISPUTE BETWEEN YOU AND EARNIN. YOU UNDERSTAND THAT YOU HAVE THE RIGHT TO REJECT THIS PROVISION AS PROVIDED IN THE SECTION ENTITLED "OPT OUT OF ARBITRATION" BELOW.

## GOVERNING LAW

These Terms of Service and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions and the Federal Arbitration Act.

## AGREEMENT TO ARBITRATE

You and Earnin agree that the sole and exclusive forum and remedy for resolution of a Dispute shall be final and binding arbitration pursuant to this section entitled "Dispute Resolution by Binding Arbitration" unless you opt out as provided below. "*Dispute*" shall include any dispute, claim or controversy arising out of or relating to these Terms of Service and/or the activities or relationships that involve, lead to, or result from these Terms of Service, including our marketing activities, and (except to the extent provided otherwise in the paragraph entitled "**NO CLASS ACTIONS**") the validity or enforceability of this "Dispute Resolution by Binding Arbitration" section, any part thereof, or the entire Terms of Service. Disputes will be settled by binding arbitration, except that each party retains the right:

- i. to bring an individual action in small claims court (a "*Small Claims Action*");
- ii. to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights (the action described in the foregoing clause (ii), an "*IP Protection Action*"); and
- iii. to bring an action seeking only injunctive relief.

Opt out of Arbitration. You may opt out of the binding arbitration described in this section by sending Earnin written notice of your desire to do so by email

at [email protected] or regular mail at ActiveHours Inc. dba Earnin, Legal Department 200 Portage Ave, Palo Alto, California USA 94301 within thirty (30) days following the date you first agree to these Terms of Service (such notice, an "*Arbitration Opt-out Notice*"). If you don't provide Earnin with an Arbitration Opt-out Notice within the thirty (30) day period, you will be deemed to have knowingly and intentionally waived your right to litigate any Dispute except with regard to a Small Claims Action, IP Protection Action, or to bring an action seeking only injunctive relief, as expressly set forth above.

## JUDICIAL FORUM FOR DISPUTES

In the event that:

- i. you or we bring an IP Protection Action;
- ii. you timely provide Earnin with an Arbitration Opt-out Notice; or
- iii. this "Dispute Resolution by Binding Arbitration" section is found not to apply.

The exclusive jurisdiction and venue of any Dispute will be the state and federal courts located in the Northern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts. You and we both further agree to waive our right to a jury trial.

## WAIVER OF RIGHT TO LITIGATE

Unless you timely provide Earnin with an Arbitration Opt-out Notice, YOU ACKNOWLEDGE AND AGREE THAT YOU AND EARNIN ARE EACH WAIVING THE RIGHT TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR JURY. THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO LITIGATE SUCH CLAIMS IN A COURT BEFORE A JUDGE OR JURY UPON ELECTION OF ARBITRATION BY ANY PARTY.

## NO CLASS ACTIONS

NO ARBITRATION SHALL PROCEED ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS EVEN IF THE DISPUTE OR DISPUTES THAT ARE THE SUBJECT OF THE ARBITRATION HAD PREVIOUSLY BEEN ASSERTED (OR COULD HAVE BEEN ASSERTED)

IN A COURT AS CLASS REPRESENTATIVE, OR COLLECTIVE ACTIONS IN A COURT. Unless consented to in writing by all parties to the arbitration, no party to the arbitration may join, consolidate, or otherwise bring claims for or on behalf of two or more individuals or unrelated corporate entities in the same arbitration unless those persons are parties to a single transaction. Unless consented to in writing by all parties to the arbitration, an award in arbitration shall determine the rights and obligations of such parties only, and only with respect to the claims in arbitration, and shall not

- a. determine the rights, obligations, or interests of anyone other than all parties to the arbitration, or resolve any Dispute of anyone other than any such party; nor
- b. make an award for the benefit of, or against, anyone other than any such party.

No administrator or arbitrator shall have the power or authority to waive, modify, or fail to enforce this specific paragraph, and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, shall be invalid and unenforceable. If this specific paragraph is held unenforceable in its entirety, then the entirety of this "Dispute Resolution by Binding Arbitration" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution by Binding Arbitration" section will survive any termination of these Terms of Service.

## ARBITRATION RULES

The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "**AAA Rules**") then in effect, except as modified by this "Dispute Resolution by Binding Arbitration" section. In the case of a conflict between the rules and policies of the administrator and this "Dispute Resolution by Binding Arbitration" section, this "Dispute Resolution by Binding Arbitration" section shall control, subject to countervailing law, unless all parties to the arbitration consent to have the rules and policies of the administrator apply. (The AAA Rules are available at [www.adr.org/arb\\_med](http://www.adr.org/arb_med)) The Federal Arbitration Act will govern the interpretation and enforcement of this "Dispute Resolution by Binding Arbitration" section.

**Arbitration Process.** A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a general Demand for Arbitration and a separate Affidavit For Waiver of Fees for qualifying California residents.) The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA's roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

**Arbitration Location and Procedure.** Unless you and Earnin otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of the documents that you and Earnin submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

**Arbitrator's Decision.** The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim.

**Fees.** If we elect arbitration, we shall pay all the administrator's filing costs and administrative fees (other than hearing fees). If you elect arbitration, filing costs

and administrative fees (other than hearing fees) shall be paid in accordance with the AAA Rules, or in accordance with countervailing law if contrary to the AAA Rules. However, if the value of the relief sought is \$10,000 or less, at your request, we will pay all filing, administration, and arbitrator fees associated with the arbitration, unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). In such circumstances, fees will be determined in accordance with the AAA Rules. Each party shall bear the expense of its own attorneys' fees, except as otherwise provided by law. If a statute gives you the right to recover any of these fees, these statutory rights shall apply in the arbitration notwithstanding anything to the contrary herein.

## **Changes to “Dispute Resolution by Binding Arbitration”**

Section. Notwithstanding the provisions of the “Acceptance of Terms” section above, if Earnin changes this “Dispute Resolution by Binding Arbitration” section after the date you first accepted these Terms of Service (or accepted any subsequent changes to these Terms of Service), you may reject any such change by sending us written notice (including by email to [email protected] ) within 30 days of the date such change became effective, as indicated in the “Last Updated” date above or in the date of Earnin’s communication to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Earnin in accordance with the provisions of this “Dispute Resolution by Binding Arbitration” section as of the date you first accepted these Terms of Service (or accepted any subsequent changes to these Terms of Service). If you do not reject any changes made by Earnin as outlined above, Earnin will assume you are accepting the changes.

Existing Litigation. Nothing in this “Dispute Resolution by Binding Arbitration” Section shall prohibit any party who is a proposed settlement class member in the proposed settlement agreement in Perks v. Activehours, Inc. d/b/a Earnin, Case No. 5:19-cv-05543-BLF (N.D. Cal.) from continuing to participate in that settlement agreement.

## **MISCELLANEOUS**

If any portion of these Terms of Service is deemed unlawful, void or unenforceable by any arbitrator or court of competent jurisdiction, these Terms of Service as a whole will not be deemed unlawful, void or unenforceable, but only that portion of these Terms of Service that is unlawful, void or unenforceable will be stricken from these Terms of Service.

You agree that if Earnin does not exercise or enforce any legal right or remedy which is contained in these Terms of Service (or which we have the benefit of under any applicable law), this will not be taken to be a formal waiver of our rights and that those rights or remedies will still be available to Earnin.

All covenants, agreements, representations and warranties made in these Terms of Service will survive your acceptance of these Terms of Service and the termination of these Terms of Service.

These Terms of Service, the Consent to Receive Electronic Disclosures, Acceptable Use Policy, Digital Millennium Content Act and User Generated Content- Terms of Use represents the entire understanding and agreement between you and Earnin regarding the subject matter of the same, and supersedes all other previous agreements.

Earnin is not currently licensed by the Department of Financial Protection & Innovation. If the Department does decide in the future to license Earnin, and/or require Earnin make modifications to its advance pay product agreement, such developments may have no impact on your obligations under this Agreement. Although Earnin is not licensed by the Department, you are invited to share any comment or concerns about Earnin or its products and practices with the

## CONTACTING US

If you have questions regarding these Terms of Service or the practices of Earnin, please contact us at [email protected], using live chat with the Earnin team via the mobile app, or you can send us a letter at:

ActiveHours Inc., dba Earnin Legal Department

200 Portage Ave.

Palo Alto, California USA 94306

## DEFINITIONS

**Bank Account** – your checking account at your bank that you have linked to your Earnin account to use the Site or Services. If your bank is not listed, then Earnin unfortunately is unable to support it as of today and you will not be able to use the Site or Services. We are actively working to support more banks as we continue to grow, and we encourage you to check back at a later time to see if your bank has been added to our list.

**Banking Day** – means Monday through Friday, excluding federal banking holidays.

**Earnin Express Account** – means your virtual sub-deposit account at Evolve Bank & Trust. All funds associated with your Earnin Express Account are held by Evolve Bank & Trust and are insured by the FDIC up to the standard maximum deposit insurance amount per depositor, per FDIC-insured bank, and per ownership category. For more information on FDIC insurance coverage, please visit [www.FDIC.gov](http://www.FDIC.gov). You may access the terms of Evolve's custodial account deposit agreement at any time here.

**Financial Calendar** – means your in-app calendar, which tracks bill reminders, daily earnings, recent Cash Outs, and when you have scheduled debits for Cash Outs.

**Required Identifying Information** – depending on the Service, we may require certain information to validate who you are, including but not limited to:

- o a copy of your government-issued photo ID, such as a passport or driver's license;
- o a copy of a utility bill, bank statement, affidavit, or other bill, dated within three months of our request, with your name and U.S. street address on it; and
- o Such other information and documentation that we may require from time to time.

**Verified Employer** –

1. that has a fixed work location in which you work out of and has an online/electronic timekeeping system, or is verified by any other means that we may permit;
2. is paying you on a regular pay schedule (weekly, bi-weekly, semi-monthly, monthly); and
3. is paying up to 50% of your earnings into your Bank Account.

If you do not, or cannot provide timesheets, you can use "Automatic Earnings", which can automatically track your earnings, and add them to your Earnin account based on your work address. To use Automatic Earnings, we need your phone's GPS (location services) to be on at all times, and you must have a fixed work address.

**Verified Source of Income** – means either:

1. paychecks you receive from a Verified Employer; or
2. anticipated income that may include, but is not limited to **certain government-**

**sponsored benefits** (as determined by Earnin) and (2) other cash distributions that you have not received.

If you are unsure or have questions please contact us by emailing [email protected] or using live chat with the Earnin team via the mobile app

## CONSENT TO RECEIVE ELECTRONIC DISCLOSURES

You understand and agree that you are entering into these Terms of Service electronically and that certain categories of information ("Communications") may be provided by us to you by electronic means (i.e., via email, through the Service by displaying links to notices generally on the Site, or to your mobile device), unless and until you withdraw your consent as described below. The categories of Communications that may be provided by electronic means include:

- o these Terms of Service and any amendments, modifications, or supplements;
- o records of any payment and other transactions you handle through the Sites or Services, including payment histories and transaction confirmations;
- o disclosures or notices provided in connection with the Services, including any required by federal or state law (including initial disclosures, periodic statements, periodic and annual error resolution notices, initial and annual privacy notices, opt-out notices, and change-in-terms notices);
- o any customer service communications, including communications with respect to claims of error or unauthorized use of the Sites or Services; and
- o any other communication related to the Sites or Services.

You understand that, in order to view and/or retain copies of the electronic Communications, you may need a computer with an Internet connection (PCs should be running Windows 7 or higher and Internet Explorer 10 or higher, Chrome, or Firefox; Macs should be running OSX and Safari, Chrome, or Firefox); a mobile device (iOS 6.0 or higher devices running Safari or Chrome; Android 4.0 or higher devices running Android Browser or Chrome). Your access to this page through your device verifies that your device meets these requirements. You must also have a valid email address, sufficient storage space to save

Communications or the capability to print the Communications from the device on which you view them.

Although we reserve the right to provide Communications in paper format at any time, you agree that we are under no obligation to do so. All Communications in either electronic or paper format will be considered to be "in writing." You should print a paper copy of these Terms of Service and any Communication that is important to you and retain the copy for your records. If you do not wish to receive these Terms of Service or the Communications electronically, you may not use the Sites or Services.

If you have opened an account with us and you wish to withdraw your consent to have Communications provided electronically, you must close your account by contacting [email protected] or using live chat with the Earnin team via the mobile app, and stop using the Sites and Services. There are no fees to close your account with us. Any withdrawal of your consent to receive electronic Communications will be effective only after we have a reasonable period of time to process your withdrawal.

We reserve the right, in our sole discretion, to discontinue the provision of your electronic Communications, or to terminate or change the terms and conditions on which we provide electronic Communications. We will provide you with notice of any such termination or change as required by law.

For all of Earnin Services, you agree that any form of electronic signature, including but not limited to signatures via facsimile, scanning, or electronic mail, may substitute for the original signature and shall have the same legal effect as an original signature.

## ACCEPTABLE USE POLICY

As a condition of your use of the Sites and Services, you represent and warrant to us that you will not use Earnin's Sites or Services for any purpose that is unlawful or prohibited by these Terms of Service.

You agree that you will not:

- request a Cash Out, Max Boost, or use Balance Shield Cash Out for any earned wages that you do not have the complete right, title and interest in or for which you have already received payment;
- use the Sites or Services in any manner that could damage, disable, overburden, or impair the Sites or Services;
- obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Sites or Services;
- access the Sites by any means other than through the interface that is provided by Earnin for use in accessing the Sites;
- use or attempt to use any engine, software, tool, agent, or other device or mechanism (including without limitation browsers, spiders, robots, avatars or intelligent agents) to navigate or search the Site or Services; or
- attempt to decipher, decompile, disassemble, or reverse-engineer any of the software comprising or in any way making up a part of the Site or the Service.

If we, in our sole discretion, have reason to believe that you may have engaged in any activities restricted by these Terms of Service or by law, we may take various actions to protect ourselves, other users, and other third parties from fees, fines, penalties, and any other liability. The actions we may take include the following:

- we may close, suspend, or limit your access to your account or ability to use the Sites or Services;
- we may update inaccurate information you provided us;
- we may decline to allow you to use the Sites or Services in the future;
- we may take legal action against you; however, with respect to any Cash Outs, Max Boost or Cash Out for Balance Shield, we will not engage in collection efforts to collect payments due to us, place the outstanding amount as a debt with, or sell it to, any third party, or report your repayment history to a credit bureau or other consumer reporting agency; and
- we may hold you liable to Earnin for the amount of damages caused by your violation of these Terms of Service.

Earnin, in its sole discretion, reserves the right to terminate these Terms of Service, access to its Sites, or access to the Services for any reason and at any time with or without notice to you.

## DIGITAL MILLENNIUM COPYRIGHT ACT

**Notice.** If you are a copyright owner or an agent thereof and believe that any content posted by an Earnin Community Member user infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (see 17 U.S.C. § 512(c)(3) for further detail):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an

exclusive right that is allegedly infringed.

You may direct copyright infringement notifications to our DMCA Agent at: Earnin  
Compliance Team ActiveHours Inc., dba Earnin

Legal Department

200 Portage Ave.

Palo Alto, California USA 94306

Email: [\[\[email protected\]\]\(mailto:\[email protected\]\)](mailto:[email protected])

You acknowledge that if you fail to comply with all of the requirements, your DMCA notice may not be valid.

Counter-Notice. If you believe that your content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your content, you may send a counter-notice containing the following information to the DMCA Agent:

- o Your physical or electronic signature;
- o Identification of the Content that has been removed or to which access has been disabled and the location at which the Content appeared before it was removed or disabled;
- o A statement that you have a good faith belief that the Content was removed or disabled as a result of mistake or a misidentification of the Content; and
- o Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in San Francisco, California, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the DMCA Agent, Earnin may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at Earnin's sole discretion.

## EARNIN USER GENERATED CONTENT - TERMS OF USE

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